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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,917	05/25/2005	Terrence John Mehan	15284.0001	8724
27890	7590	09/20/2010	EXAMINER	
STEPTOE & JOHNSON LLP			WILLIAMS, STEPHANIE ELAINE	
1330 CONNECTICUT AVENUE, N.W.				
WASHINGTON, DC 20036			ART UNIT	PAPER NUMBER
			3754	
			MAIL DATE	DELIVERY MODE
			09/20/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/516,917	MEHAN, TERRENCE JOHN	
	Examiner	Art Unit	
	STEPHANIE E. WILLIAMS	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 July 2010.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-16 and 18 is/are pending in the application.
 4a) Of the above claim(s) 4,8 and 11-16 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,3,5-7,9,10 and 18 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,3,5-7,9,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagaman (3,201,015).

3. The Wagaman reference discloses a dispenser device having a dispenser device body (14) with an inlet end (open end near 22) and an outlet end (18); a transport passage (interior area between elements 22 & 32) between the inlet end and the outlet end, the transport passage (interior area between elements 22 & 32) having an inner wall (see fig.2) including a tapered portion (see fig.2) tapering outwardly from a direction of the inlet end toward the outlet end, wherein a cross-sectional internal dimension at the inlet end of the transport passage is smaller than a cross-sectional internal dimension at the outlet end of the transport passage; and at least two sealing connector sections (inlet end connector section:28; outlet end connector section:32) proximate to both the inlet end and the outlet end, wherein at least one sealing connector section (28) is located on an inner surface of the dispenser device body (14) proximate to the inlet end (open end near 22), and at least one sealing connector section (32) is located on an outer surface of the dispenser device body (14) proximate to the outlet end (18), for sealingly connecting the device with a filler vessel (10) and an unfilled vessel

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(interior area of 16), thereby forming a substantially airtight transport passage (interior area between elements 22 & 32), so that air within the unfilled vessel (interior area of 16) is displaced by powder from the filler vessel (10) and passes through the substantially air tight transport passage during a filling operation; and wherein an exterior wall (outer wall near 28) of the transport passage (interior area between elements 22 & 32) is shaped to correspond to an inlet (open end near 22); and wherein at least one of the sealing connector sections (28,32) is in the form of a light friction fit; and wherein the dispenser device body is constructed from suitable plastics; and wherein the device is constructed from more than one part or one or more materials.

4. Application should note the recitation of the intended use of the claimed invention (the displacement of power from the filler vessel) must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

5. Application should note the recitation "for dispensing powder" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

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6. Claims 1 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Maynard, Jr. (4,600,125).

7. The Maynard, Jr. reference discloses a dispenser device having a dispenser device body (14,15) with an inlet end (at 41) and an outlet end (at 46); a transport passage (inside 15) between the inlet end and the outlet end, the transport passage (inside of 37,15) having an inner wall (inner wall of 15) including a tapered portion (along 15) tapering outwardly from a direction of the inlet end toward the outlet end, wherein a cross-sectional internal dimension at the inlet end of the transport passage is smaller than a cross-sectional internal dimension at the outlet end of the transport passage; and at least two sealing connector sections (43 that will make a sealing arrangement to 42; and outer cylindrical part of 27 to press-fit with outer rim surface of 46) proximate to both the inlet end and the outlet end, wherein at least one sealing connector section is located on an inner surface of the dispenser device body proximate to the inlet end, and at least one sealing connector section is located on an outer surface of the dispenser device body proximate to the outlet end, respectively, for sealingly connecting the device with a filler vessel (10,14) and an unfilled vessel (will be after 46), thereby forming a substantially airtight transport passage, so that air within the unfilled vessel (will be after 46) is displaced by contents from the filler vessel (10,14) and passes through the substantially airtight transport passage during a filling operation; and wherein the transport passage (along inside of 15) is substantially free of restrictions in the cross-sectional area between the inlet end and the outlet end.

8. Application should note the recitation of the intended use of the claimed invention (the displacement of power from the filler vessel) must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

9. Application should note the recitation "for dispensing powder" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Response to Arguments

10. Applicant's arguments filed 7/9/2010 have been fully considered but they are not persuasive. Following responses are relative to the above rejection. Applicant argues that the Wagaman's reference does not teach an element to sealingly connect to the device with a filler vessel and an unfilled vessel for forming a substantially air tight transport passage. Office disagrees. There is an element (28) to sealingly connect the device with the filler vessel by mating with element (12) and an element (32) to sealingly connect to the other end of the device with the unfilled vessel by mating with element (34) to form a substantially airtight transport passage. These sealing arrangements are

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airtight arrangements / capable of where no contents can escape from the device.

Regarding any arguments of material use of “powder” please see above intended use rejection statements. Office stands on above rejections. Also the applicant argues that Wagaman does not teach an element having a multiplicity of different shapes and sizes of inlet apertures. The Office believes that this argument refers to claim 7; and wherein claim 7 gives three alternative limitations to the claim that can be chosen from. Office chose that “the exterior wall of the transport passage is shaped to correspond to an inlet”. Therefore the Wagaman meets the limitation of one of the alternatives of the claim and stands on the above rejection. Next, the applicant argues that Wagaman and Maynard fails to teach or suggest air within the unfilled vessel being displaced by powder from the filler vessel and passes through the substantially airtight transport passage during a filling operation. Office disagrees. One of ordinary skill in the art is well aware that any vessel contains air before being filled with a particular content. Therefore it would have been obvious to one of ordinary skill in the art to know that once contents is being filled in the unfilled vessel, air in the unfilled vessel is being displaced by the contents filled therein. Office stands on above rejection. Moreover, applicant argues that Maynard fails to teach or suggest any structure having sealing connector sections proximate to both the inlet end and the outlet end, thereby forming a substantially airtight transport passage. Office disagrees. The sealing connector section proximate to the inlet end is element (43) and sealing connector section that is proximate to the outlet end is the outer rim surface of 46, thereby when element 43 mates with element 42 and outer rim surface of 46 mates with outer cylindrical part of

27 it forms a substantially airtight transport passage. Applicant should note that the D₂ diameter of element 27 can also be used for D₂ of 46. Therefore, there is a friction fit that seals D₂ of 46 and D₂ of 27 together. Office stands on above rejections.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. WILLIAMS whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. W./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754